

REVISED JOINT DECISION POINT LIST
CAVALIER v. VERIZON
CC DOCKET NO. 02-359

DISPUTED ISSUES	CAVALIER PROPOSED CONTRACT LANGUAGE	CAVALIER RATIONALE	VERIZON PROPOSED CONTRACT LANGUAGE	VERIZON RATIONALE
	<p>inquiry shall: (i) provide mutually agreed referrals to that Customer or prospective Customer, who inquires about the other party's products or services, (ii) not disparage or discriminate against the other party or its products or services, and (iii) not provide information about its own products or services during that same inquiry or Customer contact unless such information is specifically requested by the Customer.</p> <p>18.2.5 - Each party shall provide adequate training, and impose sufficiently strict codes of conduct or standards of conduct, for all of its employees and contractors to engage in appropriate professional conduct in any contact with the other party's customers. Each party shall investigate all reports from the other party of any material violations of such standards of conduct and provide a written report to the other party describing in detail: (a) the findings of such investigation, and (b) the remedial or disciplinary action taken in response to any improper conduct identified by the investigating party. For purposes of this section 18.2.5, "appropriate professional conduct" shall be deemed to be conduct that is in accordance with sections 18.2 of this Agreement, as well as all applicable industry standards. For</p>		<p>repair calls, the Party receiving other types of misdirected inquiries from the other Party's Customer shall not in any way disparage the other Party.</p>	

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	<p>purposes of this section 18.2, the offering of free or discounted classified (Yellow Pages) listings by Verizon or a Verizon affiliate to an existing or prospective Customer of Cavalier, in exchange for a winback of an existing Cavalier Customer or the cancellation of a prospective Cavalier Customer's order to Cavalier for service, shall be deemed not to constitute "appropriate professional conduct" and to be a violation of this section 18.2</p> <p>18.2.6 - Violation of sections 18.2.1, 18.2.4, or 18.2.5 of this Agreement shall entitle the non-offending party to immediate payment of one thousand dollars (\$1,000.00) in liquidated damages per occurrence, per subscriber. More than ten (10) violations of this provision within a single month by either party shall entitle the non-offending party to immediate payment of an additional amount of ten thousand dollars (\$10,000.00) in liquidated damages per month, above and beyond any other amounts of liquidated damages that apply under this provision. More than twenty-five (25) violations of this provision within a single month by either party shall entitle the non-offending party to immediate payment of an additional amount of fifty thousand dollars (\$50,000.00) in liquidated</p>			

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	<p>damages per month, above and beyond any other amounts of liquidated damages that apply under this provision.</p> <p>18.2.7 - Upon the first occurrence of any particular type of allegedly improper conduct reported by one party to the other, and confirmation through investigation or any informal or formal complaint proceeding that any improper conduct did occur, the non-offending party shall not be entitled to liquidated damages pursuant to section 18.2.6 of this Agreement if the investigating party certifies in good faith to the non-offending party that it has: (a) promptly investigated any report of alleged wrongdoing, and (b) taken prompt, reasonable, and appropriate remedial or disciplinary action in response to any improper conduct identified by the investigating party.</p> <p>18.2.8 - The provisions of section 18.2 of this Agreement shall not be construed to preclude either party from seeking relief in any forum of competent jurisdiction, except that each party shall be barred from seeking relief in any forum of competent jurisdiction in response to the first occurrence of any particular type of allegedly improper conduct reported by one party to the other, if the alleged</p>			

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	violation is confirmed through investigation and the investigating party certifies in good faith to the non-offending party that it has: (a) promptly investigated any report of alleged wrongdoing, and (b) taken prompt, reasonable, and appropriate remedial or disciplinary action in response to any improper conduct identified by the investigating party. Any relief available in any forum of competent jurisdiction shall be in addition to, and not in place of, any liquidated damages or other relief available or afforded to a non-offending party under section 18.2 of this Agreement.			
Issue C18: Should a credit apply for Verizon pre-production errors, should remedies be aligned between CLEC and Verizon retail customers, and should appropriate provisions govern Yellow Pages contacts and errors? (§ 19.1.6)	19.1.6.1 - Verizon's liability to Cavalier in the event of a Verizon error in or omission of a listing shall be the same as Verizon's liability to its own end user Customers for such errors in or omissions of listings, as specified in Verizon's VSCC Tariff No. 201, Section 1.E.3; provided, however, that Verizon agrees to release, defend, hold harmless and indemnify Cavalier from and against any and all claims, losses, damages, suits, or other actions, or any liability whatsoever (hereinafter for purposes of this section, "Claims"), suffered, made, instituted, or asserted by any person arising out of Verizon's listing of the listing information provided by Cavalier if such Claims are the proximate result of Verizon's gross	Cavalier believes that an adequate compensation mechanism is needed to address the problem of directory errors. Verizon responded to Cavalier's proposal by seeking to weaken the language contained in the Verizon/AT&T interconnection agreement from a provision imposing the "same" liability on Verizon as Verizon has with its own retail customers to a provision that only imposes an undefined and ambiguous "comparable" liability. If its own proposal is not adopted, Cavalier intends to opt into the AT&T language rather than accept the backsliding represented by Verizon's new "comparable" proposal.	19.1.3 - Cavalier shall provide Verizon with daily listing information on all new Cavalier Customers in the format required by Verizon or a mutually-agreed upon industry standard format, at no charge. The information shall include the Customer's name, address, telephone number, the delivery address and number of directories to be delivered, and, in the case of a business listing, the primary business heading under which the business Customer desires to be placed, and any other information necessary for the publication and delivery of directories. Cavalier will also provide Verizon with daily listing information showing Customers that have disconnected or	Although it has no obligation to do so, Verizon has agreed to compensate Cavalier for omissions or service-affecting errors in its customers' directory listings. Verizon proposes that its liability to Cavalier under these circumstances be comparable to Verizon's liability to its own customers; it has offered Cavalier a 50% credit on the monthly UNE loop rate where Cavalier serves a customer with a loop or entirely over its own facilities and a 50% credit on the resale charges for dial tone line and fixed usage services where Cavalier serves a customer with resold services. (<i>Toothman - Spencer Direct</i> , page 5, lines 6-13).

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	<p>negligence or willful misconduct; provided further that the foregoing indemnification shall apply only if and, to the extent that, Cavalier's tariffs and Customer contracts contain limitation of liability provisions which, in the event of a Verizon or Cavalier error in or omission of a directory listing, are the same in relevant substance as those contained in Verizon's tariffs, and Cavalier has complied with the provisions of Section 24.3 of this Agreement.</p> <p>19.1.6.2 - The following procedures will apply to the calculation and administration of Verizon's liability for directory errors and omissions under Section 19.1.6.1:</p> <p>(a) Within ninety (90) days of the conclusion of the distribution of a directory, Cavalier will submit a report to Verizon of all errors in that directory that Cavalier believes are attributable to a Verizon error. Within thirty (30) days of that date, Verizon will issue a report confirming the Cavalier findings. Discrepancies will be resolved pursuant to the dispute resolution procedures specified in Section 28.11.</p> <p>(b) For all directory listing errors accepted by or found to be</p>		<p>terminated their service with Cavalier. Verizon will promptly provide Cavalier with confirmation of listing order activity, either through a verification report or a query on any listing which was not acceptable.</p> <p>19.1.5 - Both Parties shall use commercially reasonable efforts to ensure the accurate listing of Cavalier Customer listings. At Cavalier's request, Verizon shall provide Cavalier with a report of all Cavalier Customer listings normally no more than ninety (90) days and no less than thirty (30) days prior to the service order close date for the applicable directory. Verizon will process any corrections made by Cavalier with respect to its listings, provided such corrections are received prior to the close date of the particular directory. Verizon will provide appropriate advance notice of applicable close dates.</p> <p>19.1.6 - As further detailed below, Verizon's liability to Cavalier in the event of a Verizon error in or omission of a listing shall be comparable to Verizon's liability to its own end user Customers for such errors in or omissions of listings; provided, however, that Verizon agrees to</p>	<p>Cavalier incorrectly describes how Verizon credits its own customers and bases its proposed language (19.1.6) on a flawed methodology. (<i>Toothman-Spencer Direct</i>, page 4, line 24 to page 5, line 3). Although Cavalier claims it seeks parity with Verizon customers, Cavalier relies on at least the following four incorrect assumptions that would provide it higher credits than Verizon retail customers receive: (1) all Verizon retail customers subscribe to flat-rated usage service (with higher fixed monthly charges); (2) all Verizon retail customers in Virginia are located in Rate Groups 7 and 8 (which have higher fixed monthly charges); (3) Verizon credits customers the maximum amount under the tariff for any error, no matter how minor or immaterial, and (4) business customers in Northern Virginia pay \$42.18 for fixed local usage packages. (<i>Toothman-Spencer Rebuttal</i>, page 8, line 19 to page 9, line 22).</p> <p>Cavalier's other proposals are unreasonable and unnecessary; they ignore the common interests of Verizon and Cavalier in working together to ensure listings are as accurate as possible. (<i>Toothman-Spencer Direct</i>, page 2,</p>

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	<p>attributable to Verizon, including but not limited to omissions, incorrect phone numbers, incorrect addresses, incorrect names, incorrect publications, incorrect captions, improperly categorized listings, and duplicate listings, Verizon will compensate Cavalier according to the following schedule, consistent with Verizon Tariff VSCC No. 201, Section 1.E.3:</p> <p style="padding-left: 40px;">(i) for residential listings, six (6) months' credit at \$25.00 per month, or \$150 per line;</p> <p style="padding-left: 40px;">(ii) for business listings involving one to ten lines, six months' credit at \$50 per month, or \$300 per line; and</p> <p style="padding-left: 40px;">(iii) for business listings involving ten or more lines, a credit in the fixed amount of \$3000.</p> <p>If Verizon or an affiliate of Verizon, through its own action or through action taken pursuant to communication with a Cavalier Customer initiated by Verizon or its</p>		<p>release, defend, hold harmless and indemnify Cavalier from and against any and all claims, losses, damages, suits, or other actions, or any liability whatsoever (hereinafter for purposes of this section, "Claims"), suffered, made, instituted, or asserted by any person arising out of Verizon's listing of the listing information provided by Cavalier if such Claims are the proximate result of Verizon's gross negligence or willful misconduct; provided further that the foregoing indemnification shall apply only if and, to the extent that, Cavalier's tariffs and Customer contracts contain limitation of liability provisions which, in the event of a Verizon or Cavalier error in or omission of a directory listing, are the same in relevant substance as those contained in Verizon's tariffs, and Cavalier has complied with the provisions of Section 24.3 of this Agreement. For a Cavalier Customer served with a Verizon Loop or entirely over Cavalier's own facilities and whose non-chargeable directory listing was either omitted from Verizon's published White Pages and/or Yellow Pages directory or was published with a service affecting error in Verizon's White Pages and/or Yellow Pages directory,</p>	<p>lines 11-15).</p> <p>For example, Cavalier proposes in Section 19.1.5 that Verizon certify the accuracy of each and every one of its customers' listings. However, because of the way Verizon's database operates, Verizon cannot simply compare Listing Verification Reports to Local Service Requests ("LSRs"). Verizon's database does not always save the identification number of the LSR that created the listing, so Verizon cannot always use the LSR to verify a listing. Verizon's database also generally does not correlate a particular listing with a particular directory and in order to compare a customer listing to a LVR, Verizon would have to create special logic for its database that would determine where the listing will eventually be published. In addition, Cavalier may submit multiple LSRs for a particular listing, which complicates any verification process, and in any event, not every LSR even contains the customer's listing information. (<i>Toothman-Spencer Rebuttal</i>, page 4, line 20 to page 5, line 16).</p> <p>Cavalier wants to shift all of the responsibility to Verizon – by, tying Verizon's financial liability to a poorly defined duty to produce</p>

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	<p>affiliate, causes an error in a classified (Yellow Pages) listing for which Cavalier would otherwise have had sole responsibility to originate or with respect to which Cavalier would otherwise have had sole responsibility for submitting appropriate information to flow through to a free classified (Yellow Pages) listing, then Verizon will provide to Cavalier a written notification of any subsequent contact that Verizon or Verizon Directory personnel may have with that customer and the nature of that contact, and Verizon will take appropriate remedial action to correct any such error and to compensate Cavalier as may be appropriate under the circumstances.</p>		<p>Verizon shall provide Cavalier a credit of fifty (50) percent of the applicable monthly Loop rate during the life of the affected Verizon published White Pages and/or Yellow Pages directory. For a Cavalier Customer served with Verizon Resold Services and whose non-chargeable directory listing was either omitted from Verizon's published White Pages and/or Yellow Pages directory or was published with a service affecting error in Verizon's White Pages and/or Yellow Pages directory, Verizon would provide Cavalier a credit of fifty (50) percent of the applicable monthly wholesale rates (<i>i.e.</i>, the applicable monthly retail rates after subtracting the applicable avoided cost discounts) for the dial tone line and the fixed local usage service resold to the Cavalier Customer during the life of the affected Verizon published White Pages and/or Yellow Pages directory. The Parties agree to determine whether a listing for a Cavalier Customer was omitted from Verizon's published directory or published with an error (which may or may not be service affecting) by comparing the relevant Verizon directory to the relevant Listing Verification Report provided by Verizon in accordance with Section 19.1.5</p>	<p>ALI codes and "other information" (19.1.3) imposing conditions upon contacts with yellow page customers (19.1.6.2(c)) -- while at the same time it wants to divest itself of any role in verifying its own customers' listings. (<i>Toothman-Spencer Direct</i>, page 4, lines 4-6; page 11, line 16; page 12, line 1, 7-11).</p> <p>Cavalier also seeks to include an unnecessary provision that would require the parties to agree to negotiate direct, unmediated access to Verizon's directory databases. (<i>Toothman-Spencer Direct</i>, page 12, line 22 to page 13, line 1).</p>

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			and any corrections thereto submitted by Cavalier to Verizon in a timely manner (<i>i.e.</i> , prior to the Closing Date for the relevant Verizon directory). 19.1.8 – No proposed language.	
Issue C21: Should the agreement allow for a unilateral Verizon demand for deposits and advance payments? (§ 20.6)	20.6 – No proposed language. [Cavalier proposes deleting § 20.6 in its entirety.]	Cavalier does not believe that Verizon should be granted the unilateral right to demand crippling amounts of deposits or advance payments from Cavalier.	20.6. Upon request by Verizon, Cavalier shall, at any time and from time to time, provide to Verizon adequate assurance of payment of amounts due (or to become due) to Verizon hereunder. Assurance of payment of charges may be requested by Verizon if Cavalier (a) in Verizon's reasonable judgment, at the Effective Date or at any time thereafter, is unable to demonstrate that it is creditworthy, (b) prior to the Effective Date, has failed to timely pay a bill (in respect of amounts not subject to a bona fide dispute) rendered to Cavalier by Verizon or its Affiliates, (c) on or after the Effective Date, fails to timely pay a bill (in respect of amounts not subject to a bona fide dispute) rendered to Cavalier by Verizon or its Affiliates, or (d) admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had a case commenced against it) under the U.S. Bankruptcy Code or any other	Verizon's assurance of payment language permits Verizon to obtain adequate assurance of payment in the event that a CLEC becomes financially unstable or unable to make payment. (<i>Smith Direct, page 19, lines 9-11</i>). Cavalier has deleted Verizon's language in its entirety. (<i>Smith Direct, page 19, line 15</i>). The limited protection afforded to Verizon by this language is similar to that provided by the security payments Verizon may require of its own end users under its retail tariffs, and the insurance Verizon requires from its vendors. (<i>Smith Direct, page 19, lines 11-14</i>). The Bureau has rejected the idea that Verizon is not entitled to any assurance of payment protection in the <i>Virginia Arbitration Order</i> . (<i>Smith Direct, page 21, lines 11-13</i>). Verizon's proposed contract language does not create an advance payment obligation. On

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			<p>law relating to bankruptcy, insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding. Unless otherwise agreed by the Parties, the assurance of payment shall consist of an unconditional, irrevocable standby letter of credit naming Verizon as the beneficiary thereof and otherwise in form and substance satisfactory to Verizon from a financial institution acceptable to Verizon, in either case in an amount equal to two (2) months anticipated charges (including, without limitation, both recurring and non-recurring charges), as reasonably determined by Verizon, for the services, facilities or arrangements to be provided by Verizon to Cavalier in connection with this Agreement. Verizon may (but is not obligated to) draw on the letter of credit upon notice to Cavalier in respect of any amounts billed hereunder that are not paid within thirty (30) days of the date of the applicable statement of charges prepared by Verizon. If Cavalier fails to timely pay (x) two (2) or more bills (in respect of amounts not</p>	<p>the contrary, Verizon can only draw on this money well after Cavalier has refused to pay its bills (<i>Smith Rebuttal, page 12, lines 8-18</i>).</p> <p>If Cavalier can be driven into bankruptcy by simply being forced to make certain of its payments at the beginning of the month, rather than the end of the month, then it has financial problems that actually demonstrate why Verizon needs such protection against the risk of Cavalier bankruptcy. (<i>Smith Rebuttal, page 13, lines 15-18</i>).</p> <p>Although the letter-of-credit provisions are triggered when Cavalier fails to timely pay a bill, the letter of credit is <u>not</u> triggered in the cases of bona fide disputes. Similarly, although the advance-payment provisions are triggered if Cavalier misses two bill payments in 60 days, this does <u>not</u> apply if the missed payments are subject to bona fide disputes. (<i>Smith Rebuttal, page 14, line 25 to page 15, line 4</i>).</p> <p>By including an assurance of payment provision in the contract, Verizon is not trying to drive Cavalier out of business – Section 20.6 does not even apply as long as Cavalier pays its bills. (<i>Smith Rebuttal, page 15, lines 12-13</i>).</p>

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			<p>subject to a bona fide dispute) that Verizon renders at any time during any sixty (60) day period or (y) three (3) or more bills (in respect of amounts not subject to a bona fide dispute) that Verizon renders at any time during any one hundred eighty (180) day period, Verizon may, at its option, demand (and Cavalier shall provide for the remainder of the term of this Agreement, including, without limitation, during any extensions of the term) additional assurance of payment, consisting of monthly advanced payments of estimated charges as reasonably determined by Verizon, with appropriate true-up against actual billed charges no more frequently than once per calendar quarter; provided, however, that Cavalier shall not be required to provide the foregoing additional assurance of payment if the total amount of the unpaid bills represents less than five percent (5%) of the total amount of Verizon's bills rendered to Cavalier hereunder during the relevant period that are not subject to a bona fide dispute. The fact that a letter of credit or other security is requested by Verizon hereunder shall in no way relieve Cavalier from compliance with Verizon's regulations as to advance</p>	

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			payments and payment for service, nor constitute a waiver or modification of the terms herein <i>pertaining to the discontinuance of service for nonpayment of any sums due to Verizon for the services, facilities or arrangements rendered.</i>	
Issue C24: Should an embargo or termination of services require prior Commission approval, as proposed in Cavalier's Virginia arbitration petition? (§ 22.4)	22.4 - If either Party defaults in the payment of any amount due hereunder, except for amounts subject to a bona fide dispute pursuant to Section 28.9 hereof with respect to which the disputing Party has complied with the requirements of Section 28.9 in its entirety or if either Party materially violates any other material provision of this Agreement, and such default or violation shall continue for sixty (60) days after written notice thereof, the other Party may terminate this Agreement or suspend the provision of any or all services provided under this Agreement by (a) providing written notice to the defaulting Party and (b) obtaining the permission of the Commission, or, if the Commission will not act, the permission of the FCC. At least twenty-five (25) days prior to the effective date of such termination or suspension, the other Party must provide the defaulting	In the event of payment dispute, Verizon should not have the unilateral right to force notice to Cavalier's customers that Cavalier may exit the market, if that is not Cavalier's intention. Existing SCC regulations require Cavalier to provide such notice to its customers, if Verizon provides notice to Cavalier of an intended discontinuance of service. Cavalier believes that the interconnection agreement should remove this imbalance by requiring prior SCC approval before either party provides notice of discontinuance.	22.4 - If either Party defaults in the payment of any amount due hereunder, except for amounts subject to a bona fide dispute pursuant to Section 28.9 hereof with respect to which the disputing Party has complied with the requirements of Section 28.9 in its entirety or if either Party materially violates any other material provision of this Agreement, and such default or violation shall continue for sixty (60) days after written notice thereof, the other Party may terminate this Agreement or suspend the provision of any or all services hereunder by providing written notice to the defaulting Party. At least twenty-five (25) days prior to the effective date of such termination or suspension, the other Party must provide the defaulting Party and the appropriate federal and/or state regulatory bodies with	Verizon's proposed language is reasonable and would allow Verizon to terminate or suspend service to Cavalier upon 25 days written notice to Cavalier and the appropriate regulatory body, but only after Verizon provides Cavalier notice of the default and 60 days to cure. <i>(Smith Direct at page 22, lines 11-15).</i> Contrary to Cavalier's stated rationale, Verizon's language does not address notice to a defaulting party's customers; this is governed by Virginia SCC rules. <i>(Smith Direct, page 26, lines 13-16).</i> Cavalier's language would require Verizon to get an order from the Virginia SCC or the Commission before Verizon could terminate Cavalier for non-payment. <i>(Smith Direct, page 24, lines 5-10).</i> This language goes beyond what the law requires and would require

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	<p>Party and the appropriate federal and/or state regulatory bodies with written notice of its intention to terminate the Agreement or suspend service if the default is not cured. Notice shall be posted by overnight mail, return receipt requested. If the defaulting Party cures the default or violation within the sixty (60) day period, the other Party shall not terminate the Agreement or suspend service provided hereunder but shall be entitled to recover all reasonable costs, if any, incurred by it in connection with the default or violation, including, without limitation, costs incurred to prepare for the termination of the Agreement or the suspension of service provided hereunder. For the avoidance of any doubt, and notwithstanding any other provision of this Agreement or any right conferred by Applicable Law, neither party may terminate service or refuse to provide additional services under this Agreement except in accordance with an order of the Commission or the FCC, entered after a proceeding in which the party whose services were to be affected has had a full and fair opportunity to present its position on any material matters in dispute between the parties.</p>		<p>written notice of its intention to terminate the Agreement or suspend service if the default is not cured. Notice shall be posted by overnight mail, return receipt requested. If the defaulting Party cures the default or violation within the sixty (60) day period, the other Party shall not terminate the Agreement or suspend service provided hereunder but shall be entitled to recover all reasonable costs, if any, incurred by it in connection with the default or violation, including, without limitation, costs incurred to prepare for the termination of the Agreement or the suspension of service provided hereunder.</p>	<p>Verizon to continue providing service to Cavalier long after Cavalier has stopped paying for it. (<i>Smith Direct</i>, page 25, lines 5-9).</p> <p>Moreover, Cavalier has the ability to initiate a proceeding to block the service embargo. (<i>Smith Rebuttal</i>, page 116, lines 7-9).</p> <p>Cavalier admits that the discontinuance notices that it once sent to its customers are not Verizon's fault, but are required by the Virginia SCC. If Cavalier dislikes the Virginia SCC's rules, it should protest to the Virginia SCC, rather than asking the Bureau to compel Verizon to continue providing service to delinquent customers. (<i>Smith Rebuttal</i>, page 16, lines 10-14).</p>
<p>Issue C25: Should the agreement include a new section 25.5.7: "for</p>	<p>25.5.7 - for legally cognizable damages claimed as a result of either party's alleged violation of</p>	<p>Cavalier believes that Cavalier should not be required to contract away its right to</p>	<p>25.5.7 for a claim of defamation; 25.5.8 for a claim of misleading or inaccurate advertising; or</p>	<p>The parties agree that the Agreement should contain a limitation of liability provision.</p>

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legally cognizable damages claimed as a result of either party's violation of state or federal law governing the provision of telecommunications services or commerce more generally, or as a result of either party's violation of any state or federal regulations governing telecommunications or commerce more generally?" (§ 25.5.7)	state or federal law governing the provision of telecommunications services or commerce more generally, or as a result of either party's alleged violation of any state or federal regulation governing telecommunications or commerce more generally.	damages otherwise available for violation of the laws regulating commerce (principally, federal and state antitrust laws) and communications (principally, the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and Titles 12.1 and 56 of the Virginia Code) solely because of Verizon's insistence on limited its liability to Cavalier.	25.5.9 for a claim of violation of antitrust laws (including a claim for trebled or multiple damages under such antitrust laws).	<p>(<i>Romano Direct</i>, page 2, lines 8-10).</p> <p>Cavalier's language would gut this provision by seeking a guarantee that Verizon provide perfect service to Cavalier. The Bureau rejected a similar request in the <i>Virginia Arbitration Order</i>. (<i>Romano Direct</i>, page 5, lines 10-15).</p> <p>In response to concerns articulated by Cavalier, Verizon has proposed to add three further exclusions to the limitation of liability provisions set forth in section 25.5 to clarify that liability for certain claims is not limited by the interconnection agreement. Specifically, Verizon is willing to exclude the following claims from the limitation of liability provisions: defamation, misleading or inaccurate advertising, and violation of antitrust laws. (<i>Romano Rebuttal</i>, page 2, lines 3-8).</p> <p>The Performance Assurance Plan, created in New York and adopted in Virginia (and 12 other jurisdictions) provides Verizon with an incentive to perform its obligations under the interconnection agreement. The PAP has self-executing payments to CLECs that put hundreds of</p>

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				<p>millions of dollars at risk annually if Verizon's wholesale performance falls below certain standards. The purpose of a PAP is to ensure that CLECs receive service at parity with Verizon's retail customers by penalizing Verizon for failure to provide such service. (<i>Agro Rebuttal</i>, page 1, lines 22-24; page 2, lines 1-12).</p> <p>Both the Commission and the Virginia SCC have found that the Virginia PAP is effective in ensuring Verizon's non-discriminatory treatment of CLECs. (<i>Agro Rebuttal</i>, page 3, lines 1-18; page 4, lines 1-19).</p> <p>Recent changes to the Virginia PAP made it more demanding by adding more measures of performance. In addition, the revised Virginia PAP allocates penalty payments made by Verizon between CLECs using unbundled loops and CLECs using UNE-platform. The Virginia PAP now allocates a higher percentage of penalty payments to CLECs using unbundled loops than the New York PAP does. (<i>Agro Rebuttal</i>, page 4, lines 23-26; page 5, lines 1-4).</p> <p>Cavalier and all other CLECs in Virginia had an opportunity to be heard on this change, and Cavalier</p>

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				filed comments objecting to the Virginia PAP's new allocation, but the Virginia SCC disagreed with Cavalier. (<i>Agro Rebuttal</i> , page 5, lines 4-8).
Issue C27: Should pricing be added for charges from Cavalier for Cavalier truck rolls, Verizon missed/fouled appointments, and similar items? (Exhibit A(2).)	<p>Exhibit A(2)</p> <p>IV - UNE-Related Functions Performed by Cavalier</p> <p>WINBACKS</p> <p>Winbacks – Service Order Recurring Charges – N/A Non Recurring Charges – \$10.81</p> <p>Winbacks – Installation Recurring Charges – N/A Non Recurring Charges – \$2.68</p> <p>Total Recurring – N/A Non Recurring Charges - \$13.49</p> <p>PREMISE VISIT – NEW LOOPS, HOT CUTS</p> <p>Premises visit – Service Order Recurring Charges – N/A Non Recurring Charges - \$47.55</p> <p>Total Recurring Charges – N/A Non Recurring Charges - \$47.55</p> <p>PREMISE VISIT – MAINTENANCE</p>	Cavalier believes that it should be compensated for functions that it performs that are comparable to functions that Verizon performs at a charge to Cavalier. Verizon agreed to compensate Cavalier for parallel winback functions, but then asserted that Cavalier performs no parallel functions. Verizon agreed to arbitrate the issue of truck rolls (including dispatches of Cavalier technicians required by loops delivered without dial tone), but then asserted that jurisdiction is lacking to arbitrate the issue.	<p>Exhibit A(2)</p> <p>IV. All other Cavalier Services Available to Verizon for Purposes of Effectuating Local Exchange Competition</p> <p>Available at Cavalier's tariffed or otherwise generally available rates.</p>	<p>Jurisdiction to determine the rates Cavalier proposes to charge to Verizon lies with the Virginia SCC, not the Bureau. (<i>Albert Panel Direct</i>, page 28, lines 3-8).</p> <p>Cavalier's proposed charges are unnecessary, duplicative of existing performance standards, and difficult to administer. (<i>Albert Panel Direct</i>, page 28, lines 12-16; lines 21-22).</p> <p>Furthermore, Cavalier has not provided any cost studies to support its various rate proposals. (<i>Albert Panel Direct</i>, page 29, lines 17-20).</p> <p>An interconnection agreement may include rates on which the parties have agreed or which the Commission's Rules prescribe. In all other cases, however, Cavalier must seek authorization from the Virginia SCC for the rates it proposes to charge. <i>Virginia Arbitration Order</i> ¶ 589. (<i>Albert Panel Direct</i>, page 28, lines 6-8).</p> <p>The rates that Cavalier proposes are not "rates on which the parties</p>

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DISPUTED ISSUES	CAVALIER PROPOSED CONTRACT LANGUAGE	CAVALIER RATIONALE	VERIZON PROPOSED CONTRACT LANGUAGE	VERIZON RATIONALE
	<p>Premise Visit – Service Order Recurring Charges – N/A Non Recurring Charges - \$47.55</p> <p>Total Recurring Charges – N/A Non Recurring Charges - \$47.55</p> <p>MISSED APPOINTMENTS</p> <p>Premises Visit – Service Order Recurring Charges – \$16.00 for each quarter hour after the first half hour's <i>delay</i> Non Recurring Charges - \$50.00</p> <p>V. Cavalier Collection Services</p> <p>Intrastate collection –Under the same rates, terms, and conditions as applicable per Verizon – VA SCC Tariff No. 218, as amended from time to time.</p> <p>VI. Cavalier Operation Support Systems</p> <p>Under the same rates, terms, and conditions specified in this Exhibit A for analogous Verizon operation support <i>systems functions</i></p> <p>VII. All Other Cavalier Services Available to Verizon for Purposes of Effectuating Local Exchange Competition</p> <p>Available at rates comparable to</p>			<p>have agreed,” nor are they prescribed by the Commission’s rules. (<i>Albert Panel Rebuttal, page 20, lines 21-22</i>).</p> <p>In addition to assuring satisfactory performance to CLECs in the aggregate, the PAP was designed to assure satisfactory performance vis-à-vis particular carriers. If Verizon does not meet a critical measure, such as PR-4-04, at the industry aggregate level in a given month (that is, if Verizon misses too many total CLEC appointments in one month), Verizon must make penalty payments to every CLEC that received substandard service. If, however, Verizon meets a critical measure, such as PR-4-04, at the industry aggregate level for two consecutive months, but nonetheless misses the measure in both months “vis-à-vis Cavalier,” Verizon must pay penalties to Cavalier. Therefore, the carrier- specific remedies contained in the Virginia PAP are sufficient to address Cavalier’s concerns, and there is no need for the additional layer of carrier-specific remedies Cavalier proposes. (<i>Agro Rebuttal, page 7, lines 6-16</i>).</p> <p>The most recent PAP Report (June 2003) shows that Verizon has provided Cavalier customers with a</p>

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	<p>Verizon charges or at Cavalier's tariffed rates or generally available rates.</p> <p><u>See also accompanying redlined version of Exhibit A, which is excerpted from Exhibit B to Cavalier's August 1, 2003 Petition in this proceeding.</u></p>			<p>level of service that exceeds the benchmark standard set by the Virginia SCC. This same report also shows that, for all critical measures, Verizon provides Cavalier customers with a level of service that is always as good as, and generally exceeds, the level of service that Verizon provides its own retail customers. (<i>Agro Rebuttal</i>, page 7, lines 20-24).</p> <p>In connection with Verizon's section 271 application in Virginia, the Virginia SCC staff reported that it had been able to replicate Verizon's performance results successfully since the Fall of 2001 and that it continues to do so on an ongoing basis. (<i>Agro Rebuttal</i>, page 8, lines 6-8).</p> <p>The first annual audit of Verizon's reporting accuracy under the Virginia PAP is taking place now, with the Liberty Group Consultants performing the audit. (<i>Agro Rebuttal</i>, page 8, lines 11-13).</p> <p>Cavalier could avoid sending its technicians out in the first place if it participated in Verizon's Cooperative Testing program for digital (or xDSL-capable) loops, as most CLECs do. Under this program, when Verizon completes a service installation, the</p>

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DISPUTED ISSUES	CAVALIER PROPOSED CONTRACT LANGUAGE	CAVALIER RATIONALE	VERIZON PROPOSED CONTRACT LANGUAGE	VERIZON RATIONALE
				<p>technician calls the number provided by Cavalier on the order form submitted by Cavalier. The Verizon technician then works with Cavalier in real time to confirm that the service is working. If it is not working, Verizon will work with Cavalier to resolve the problem. (<i>Albert Panel Rebuttal, page 21, lines 25-26; page 22, lines 1-3</i>).</p> <p>If Cavalier loses a customer served by a Cavalier switch, Cavalier needs only (1) to port the customer's telephone number to the other carrier – an action for which carriers do not charge each other, consistent with the Commission's rules (<i>Number Portability Order</i> ¶ 49); and (2) to update the E911 database. If Cavalier loses a customer served by resale or through UNE-P, Cavalier does not even have to perform these limited functions. Verizon does not charge for these activities when a Verizon customer switches to Cavalier. There is no reason why Cavalier should charge for these activities when the process is reversed. (<i>Albert Panel Direct, page 30, lines 7-15</i>).</p> <p>Verizon does not charge Cavalier for any of the functions that Mr. Ferrio describes in that chart. (<i>Albert Panel Rebuttal, page 23</i>,</p>

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				<p><i>lines 12-13).</i></p> <p>When Cavalier wins a customer from Verizon and orders a loop from Verizon, Verizon charges a non-recurring and a recurring charge for the loop. The non-recurring charge is intended to cover Verizon's costs for provisioning the loop. For example, in some cases, a technician has to go out into the field to rearrange facilities in order to make a loop available to Cavalier's customer. In other cases, a central office technician will cross-connect the loop to Cavalier's collocation arrangement. Cavalier provides no such facility to Verizon when Verizon wins a customer from Cavalier therefore performs no such functions. (<i>Albert Panel Rebuttal, page 23, lines 16-23</i>).</p>
<p>Issue V34: Should Cavalier be required to provide monthly advanced payments of estimated charges, with appropriate true-up against actual billed charges, if Cavalier is insolvent or fails to timely pay two or more bills from Verizon or a Verizon affiliate in any 12-month period? (§ 20.6).</p>			See Response to Issue C21.	

Loop Rates Excerpted From Exhibit A of Verizon Proposed Agreement.¹

¹ Verizon does not agree to Cavalier's proposed footnote 1 or Cavalier's proposed changes to Exhibit A and Exhibit B.

Service or Element Description:**VI. Unbundled Loops**

2 Wire Analog Loops (POTS Loops)

Recurring Charges:**Density Cell:**

1 - \$10.74/Month

2 - \$16.45/Month

3 - \$29.40/Month.

Non-Recurring Charges:Service Order Connect:
\$10.81/OrderService Order Disconnect:
\$4.91/Order**Installation:**If a premises visit is not
required, initial & each
additional loop - \$2.68If a premises visit is
required: initial loop
installed on that visit:
\$47.55;
Each additional loop
installed on that visit:
\$21.69**Installation Disconnect:**

\$1.07/Loop

Engineering Query: \$121.37**Engineering Work Order:**
\$500.90**Expedite Engineering Query:**
TBD**Expedite Engineering Work**
Order: TBD**Line and Station Transfers:**
\$127.28**Copper to a Digital Loop**
Carrier (DLC) Arrangement:
\$254.56**Rearrangement IDLC to**
Copper Cable: \$127.28**Rearrangement IDLC to**
UDLC: \$127.28

Service or Element Description:

4 Wire Premium Loops

Recurring Charges:**Density Cell:**

1 - \$22.25/Month

2 - \$33.23/Month

3 - \$56.75/Month.

Non-Recurring Charges:

Service Order Connect:

\$10.81/Order

Service Order Disconnect:

\$4.91/Order

Installation:

If a premises visit is not required, initial & each additional loop: \$50.89

If a premises visit is required: initial loop installed on that visit:

\$107.50;

Each additional loop installed on that visit

\$81.63

Installation Disconnect:

\$1.07/Loop

Engineering Query: \$121.37**Engineering Work Order:****\$500.90****Expedite Engineering Query:****TBD****Expedite Engineering Work****Order: TBD****Line and Station Transfers:****\$127.28****Copper to a Digital Loop****Carrier (DLC) Arrangement:****\$254.56****Rearrangement IDLC to****Copper Cable: \$127.28****Rearrangement IDLC to****UDLC: \$127.28**

Service or Element Description:

ISDN Loops

Recurring Charges:**Density Cell:**

1 - \$12.52/Month
2 - \$18.23/Month
3 - \$31.18/Month.

Non-Recurring Charges:

Service Order Connect:
\$15.29/Order

Service Order Disconnect:
\$4.91/Order

Installation:

If a premises visit is not required, initial & each additional loop - \$11.61

If a premises visit is required: initial loop installed on that visit:
\$56.48

Each additional loop installed on that visit:
\$30.62

Installation Disconnect:
\$1.07/Loop

Engineering Query: \$121.37

Engineering Work Order:
\$500.90

Expedite Engineering Query:
TBD

Expedite Engineering Work Order: TBD

Line and Station Transfers:
\$127.28

Copper to a Digital Loop Carrier (DLC) Arrangement:
\$254.56

Rearrangement IDLC to Copper Cable: \$127.28

Rearrangement IDLC to UDLC: \$127.28

Service or Element Description:

DS-1 Loops

Recurring Charges:**Density Cell:**

1 - \$110.61/Month

2 - \$142.49/Month

3 - \$181.29/Month.

Non-Recurring Charges:**Service Order Connect:**

\$10.81/Order

Service Order Disconnect:

\$4.91/Order

If premises visit not
required, initial & each
additional loop - \$50.89

If a premises visit is
required: initial loop
installed on that visit
\$107.50;

Each additional loop
installed on that visit:
\$81.63

Installation Disconnect:

\$1.07/Loop

Service or Element Description:**Recurring Charges:****Non-Recurring Charges:**

DS-3 Loops

Density Cell:

1-\$1181.15

2-\$1181.15

3-\$1181.15

Service Order Connect:

\$10.81/Order

Service Order Disconnect:

\$4.91/Order

If premises visit not
required, initial & each
additional loop - \$50.89

If a premises visit is
required: initial loop
installed on that visit
\$107.50;

Each additional loop
installed on that visit:
\$81.63

Installation Disconnect:

\$1.07/Loop

DDS/56 Kb Loop

Density Cell:

1 - \$36.44/Month

2 - \$46.76/Month

3 - \$46.76/Month.

Service Order Connect:

\$15.29/Order

Service Order Disconnect:

\$4.91/Order

If premises visit not
required, initial & each
additional loop - \$11.61

If a premises visit is
required: initial loop
installed on that visit:
\$56.48;

Each additional loop
installed on that visit:
\$30.62

Installation Disconnect:

\$1.07/Loop